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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

BENJAMIN SMITH,

Defendant and Appellant.

F071565

(Super. Ct. Nos. F14905193 &
F14910168)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. David A. Gottlieb, Judge.

Paul Kleven, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Gomes, Acting P.J., Poochigian, J. and Detjen, J.

INTRODUCTION

Appellant/defendant Benjamin Smith entered in negotiated dispositions in two domestic violence cases. On appeal, his appellate counsel has filed a brief that summarizes the facts with citations to the record, raises no issues, and asks this court to independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).) We will affirm.

FACTS¹

Case No. F14905193

Defendant and C.V. (the confidential victim) were in a relationship for eight years. They lived together and had three children. On May 31, 2014, C.V. left the residence with the children. Defendant called her throughout the day and wanted to know where she was. At 5:00 p.m., C.V. arrived home and defendant argued with her. C.V. asked defendant to leave, but he refused. C.V. slept in her children's room to stay away from him.

On June 1, 2014, defendant wanted to talk to C.V., but she kept her distance and tried to avoid him. Defendant caught C.V. in the hallway. He grabbed and squeezed her, to let her know that she was not going anywhere. Defendant said she was worthless and called her demeaning names. He grabbed C.V.'s face and told her to repeat the names to him.

After 10:00 p.m., C.V. was sitting on the living room couch watching television. Defendant sat on the opposite end of the couch. Suddenly, defendant moved to C.V.'s position and put her in a headlock. He wrapped his right arm around her head, grabbed her lips with his teeth, and said she was not going to get away. C.V. felt she was going to get a “ ‘beat down’ ” if she did not protect herself. C.V. had a difficult time yelling, and

¹ The following facts are from the probation report, which recited the facts from the police reports.

she could not breathe very well. Their teenage daughter was in the house, but she was taking a shower.

C.V. tried to punch defendant but could not swing very well. She tried to scratch him, but was afraid she would go to jail if she hurt him. She struggled and was able to break free from defendant.

Defendant produced a switchblade and opened the knife. He told C.V. that he was going to slice her face and held the knife close to her face. C.V. thought defendant was going to kill her.

C.V. ran into the kitchen and grabbed a knife. C.V. held the knife in her hand and told defendant, “ ‘Just do it. If that’s what you want to do. Kill me then, I don’t have anything more to fight with you.’ ” Defendant said, “ ‘Here it comes bitch,’ ” and started running towards her.

C.V. threw the knife and ran into the corner. Defendant pinned her against the wall and said, “ ‘You have nothing to keep me from doing it.’ ”

C.V. told defendant to leave her alone, and that she was going to call the police. Defendant handed the cellphone to C.V., and told her to go ahead, but no one would believe her. C.V. pretended to call the police and defendant walked outside.

On June 2, 2014, the police responded to the residence in response to defendant’s call about a domestic disturbance. Defendant said he wanted the police to arrest C.V., and claimed she threw a knife at him. Defendant said he wanted C.V. out of the residence, and said C.V. always called the police and got him arrested, but “ ‘[t]his time she needs to get arrested too.’ ” Defendant admitted he had been drinking, and claimed C.V. used illegal drugs.

The officers evaluated C.V. and determined she was not on drugs. They also determined defendant’s bruise was not consistent with his story.

C.V. told the officer that the incident began on May 29, 2014, when she arrived home and believed defendant had been drinking. Defendant left and returned, and tried

to force C.V. to have sex with him. C.V. resisted and they continued to argue. C.V. left with her children. C.V. said there was another incident on June 1, 2014, and she thought it was better for defendant to kill her rather than live in fear. She was afraid to call the police because of defendant's threats. She admitted that she threw a knife, but it did not hit defendant.

C.V. showed the officer that she had bruises on her face, arms, and legs, and a cut near her right eye. The officer gave her an emergency protective order.

Defendant was arrested and advised of the warnings pursuant to *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*). He refused to give a statement.

The charges

On June 19, 2014, an information was filed in case No. F14905193, charging defendant with count I, corporal injury to a spouse (Pen. Code, § 273.5, subd. (f)(1))² with a prior conviction (§ 273.5, subd. (d)).

Case No. F14910168

At 3:20 a.m. on October 25, 2014, an officer responded to a dispatch about a suspicious vehicle that was driving in and out of a neighborhood. The officer found the vehicle parked about 40 yards south of C.V.'s confidential location. Defendant was sitting in the driver's seat, and an open can of beer was inside the vehicle.

The officer asked defendant what he was doing. Defendant said that he left the confidential location because there were "people there" that he did not want to be around. He added that C.V. had yelled at him, and he wanted to get away for a few hours.

The officer checked defendant's name through dispatch. The officer learned that the previous day, defendant had been listed as the suspect in a violation of a domestic violence restraining order at the same location, but he left before the officers arrived.

² All further statutory citations are to the Penal Code unless otherwise indicated.

The officer returned to defendant's vehicle and ordered him to get out. The officer asked if there were any weapons in the vehicle. Defendant said no, and that the officer could check. The officer found a weapon on the floorboard behind the backseat, under a black bag. The weapon was a .22-caliber Ruger rifle with a large capacity magazine, a cutdown stock, and a sawed-off barrel. There was one round in the chamber and 14 rounds in the magazine.

The officer contacted C.V., who said defendant had not been staying at the confidential location since he was served with a restraining order in June or July 2014.

The officer advised defendant of the *Miranda* warnings, and defendant agreed to answer questions. Defendant said he had been living at the confidential location for months. He had been driving that vehicle for weeks, and he was the only person who drove it. Defendant denied owning any firearms and did not know how the rifle got into the backseat. Defendant said he had given rides to some people the previous day, but did not know why someone would leave a rifle in the backseat. Defendant was arrested.

The charges

On November 3, 2014, a complaint was filed in case No. F14905193, charging defendant with count I, possession of a firearm by a felon (§ 29800, subd. (a)(1)); count II, possession of a short-barreled rifle or shotgun (§ 33215); count III, misdemeanor disobedience of a domestic relations court order (§ 273.6, subd. (c)); count IV, misdemeanor possession of a firearm while subject to a restraining order (§ 29825, subd. (b)); and count V, possession of a firearm with a prior felony conviction (§ 29805).

As to counts I through IV, it was further alleged defendant committed the offenses while released on bail or his own recognizance (§ 1054.3).

Plea proceedings

On January 29, 2015, defendant entered into negotiated dispositions for both cases.

In case No. F14905193, defendant pleaded no contest to count I, corporal injury to a spouse (§ 273.5, subd. (f)(1)) and admitted the prior conviction (§ 273.5, subd. (d)), for stipulated sentence of no more than two years.

In case No. F14910168, defendant pleaded no contest to count I, possession of a firearm by a felon (§ 29800, subd. (a)(1)), for a concurrent term.

The court found the factual basis for the pleas was based on the police reports, and granted the People's motion to dismiss the remaining charges.

The sentencing hearing

On April 21, 2015, the court sentenced defendant to two years in case No. F14905193, and a concurrent term of one year four months in case No. F14910168. The court also imposed a protective order for one year for C.V.

On May 1, 2015, defendant filed timely notices of appeal in both cases, and requested and received certificates of probable cause.

DISCUSSION

As noted above, defendant's counsel has filed a *Wende* brief with this court. The brief also includes the declaration of appellate counsel indicating that defendant was advised he could file his own brief with this court. By letter on December 11, 2015, we invited defendant to submit additional briefing. He has failed to do so.

After independent review of the record, we find that no reasonably arguable factual or legal issues exist.

DISPOSITION

The judgment is affirmed.